

08:24:06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-15-00365-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) JUNE 20, 2017
)
KALBASI,) PAGES 1-37
)
DEFENDANT)
)
)
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: BY: SUSAN FRANCES KNIGHT
U.S. ATTORNEY'S OFFICE
150 ALMADEN BLVD., SUITE 900
SAN JOSE, CA 95113

FOR THE DEFENDANT: BY: DANIEL LEE BARTON
NOLAN BARTON BRADFORD & OLMOS, LLP
600 UNIVERSITY AVE.
PALO ALTO, CA 94301

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

JUNE 20, 2017

2 P R O C E E D I N G S

3 (COURT CONVENED AT 8:31 A.M.)

08:31:07 4 THE COURT: ALL RIGHT. LET'S CALL OUR FIRST CASE.

08:31:09 5 THE CLERK: CALLING CASE 15-365. UNITED STATES V.
08:31:15 6 NIMA KALBASI.

08:31:18 7 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

08:31:18 8 MS. KNIGHT: GOOD MORNING, YOUR HONOR.

08:31:19 9 SUSAN KNIGHT FOR THE UNITED STATES.

08:31:21 10 THE COURT: HELLO, MS. KNIGHT.

08:31:22 11 PROBATION OFFICER: GOOD MORNING, YOUR HONOR.

08:31:24 12 INDIANA ALBANES WITH PROBATION.

08:31:25 13 THE COURT: GOOD MORNING.

08:31:26 14 MR. BARTON: DAN BARTON APPEARING WITH MR. KALBASI
08:31:28 15 WHO IS PRESENT IN COURT OUT OF CUSTODY.

08:31:30 16 GOOD MORNING, YOUR HONOR.

08:31:31 17 THE COURT: GOOD MORNING.

08:31:32 18 GOOD MORNING, MR. KALBASI.

08:31:33 19 THE DEFENDANT: GOOD MORNING.

08:31:33 20 THE COURT: ALL RIGHT. THIS IS THE TIME SET FOR
08:31:40 21 SENTENCING.

08:31:40 22 BEFORE WE GET STARTED FORMALLY, WE HAVE A NUMBER OF THINGS
08:31:43 23 TO GO OVER. MS. KNIGHT, ARE WE GOING TO BE DEALING WITH THE
08:31:46 24 RESTITUTION ISSUE TODAY?

08:31:47 25 MS. KNIGHT: YOUR HONOR, I FILED SOMETHING BRIEF LAST

08:31:49 1 NIGHT ABOUT CONTINUING IT FOR 90 DAYS IN ORDER FOR THE PARTIES
08:31:52 2 TO FURTHER EXPLORE THE INVESTIGATION COST TO TESLA.

08:31:56 3 AS WE SAID IN OUR MEMO, WE DON'T BELIEVE THAT COLLATERAL
08:32:01 4 ESTOPPEL APPLIES IN THIS MATTER, BUT IF THE COURT WISHES
08:32:04 5 FURTHER BRIEFING, WE CAN DO THAT.

08:32:06 6 THE COURT: I APPRECIATE THAT AND IT'S A BIG ISSUE,
08:32:10 7 SO I PROBABLY WOULD LIKE SOME FURTHER BRIEFING. AND THE
08:32:14 8 GOVERNMENT IS NOT REQUESTING THE FULL AMOUNT THAT TESLA HAS
08:32:18 9 ITEMIZED?

08:32:19 10 MS. KNIGHT: THAT'S CORRECT, YOUR HONOR.

08:32:21 11 ALTHOUGH TESLA BELIEVES THEY ARE ENTITLED TO THE FULL
08:32:24 12 AMOUNT, THE GOVERNMENT TOOK A CLOSER LOOK AT THE ISSUE AND
08:32:27 13 BELIEVES THAT THE ATTORNEY'S FEES SHOULD NOT BE INCLUDED.

08:32:32 14 THE COURT: AND I NEED TO UNDERSTAND THAT.

08:32:34 15 AND IS THERE SOMEONE FROM TESLA TODAY?

08:32:36 16 MS. KNIGHT: YES, CANDACE JACKMAN IS IN THE COURTROOM
08:32:39 17 AND WISHES TO MAKE A BRIEF STATEMENT.

08:32:40 18 THE COURT: GOOD MORNING, MS. JACKSON.

08:32:42 19 AND THE COURT WELCOMES ANY VICTIM TO MAKE A STATEMENT TO
08:32:44 20 THE COURT AND ACKNOWLEDGE ON THE RECORD THAT YOU ARE HERE. AND
08:32:47 21 AS I GO THROUGH, I CERTAINLY WILL WANT TO HEAR FROM YOU THIS
08:32:50 22 MORNING. SO THANK YOU FOR BEING HERE.

08:32:52 23 ALL RIGHT THEN. WITH THAT, WHY DON'T WE GET STARTED. SO
08:32:59 24 IT IS THE DESIRE OF THE PARTIES THAT I PRONOUNCE SENTENCE TODAY
08:33:03 25 AND EXCLUDE THE RESTITUTION TO A SEPARATE HEARING; IS THAT

08:33:08 1 CORRECT?

08:33:08 2 MR. BARTON: I HAVE NO OBJECTION TO THAT, YOUR HONOR.

08:33:09 3 THE COURT: OKAY. THANK YOU, MR. BARTON.

08:33:11 4 AND MR. KALBASI DOESN'T ACTUALLY LIVE LOCALLY?

08:33:14 5 MR. BARTON: HE LIVES IN TORONTO, YOUR HONOR.

08:33:16 6 THE COURT: SO HE WILL RETURN WHEN WE HAVE A HEARING
08:33:18 7 ON THE RESTITUTION ISSUE IN 90 DAYS OR WHENEVER WE SCHEDULE IT?

08:33:22 8 MR. BARTON: HE CAN, OR PERHAPS WE CAN WAIVE HIS
08:33:27 9 PRESENCE, DEPENDING ON HOW THE COURT WANTS TO HANDLE IT, OR WE
08:33:31 10 CAN HAVE HIM APPEAR TELEPHONICALLY.

08:33:34 11 THE COURT: I'M AMENABLE TO ANY OF THOSE
08:33:35 12 POSSIBILITIES. I DO NOT THINK HE PERSONALLY NEEDS TO BE HERE,
08:33:38 13 BUT I WILL LET YOU SEE HOW THAT DEVELOPS.

08:33:40 14 MR. BARTON: THANK YOU.

08:33:41 15 THE COURT: OKAY. ALL RIGHT. THEN LET ME GO
08:33:46 16 FORWARD.

08:33:46 17 LET ME SAY THAT -- WELL, FIRST OF ALL, HAVE BOTH ATTORNEYS
08:33:50 18 RECEIVED A COPY OF THE PRESENTENCE REPORT?

08:33:52 19 MS. KNIGHT: YES, YOUR HONOR.

08:33:53 20 MR. BARTON: YES, YOUR HONOR.

08:33:55 21 THE COURT: ALL RIGHT. AND ARE THERE ANY OTHER
08:33:56 22 DOCUMENTS TO SUBMIT TO THE COURT THAT I HAVEN'T ALREADY
08:33:59 23 RECEIVED?

08:33:59 24 MS. KNIGHT: NO, YOUR HONOR.

08:34:00 25 MR. BARTON: NO, YOUR HONOR.

08:34:00 1 THE COURT: OKAY. I DID RECEIVE THE STATEMENT FROM
08:34:02 2 TESLA AND I DID RECEIVE THE SENTENCING MEMORANDA, AND
08:34:12 3 MR. BARTON DID PROVIDE TO ME SIGNIFICANT ADDITIONAL
08:34:15 4 DOCUMENTATION, WHICH I GREATLY APPRECIATE. AND DOES THE
08:34:19 5 PROBATION OFFICER'S REPORT REFLECT ALL OF THE MODIFICATIONS
08:34:23 6 THAT WERE REQUESTED BY THE PARTIES THAT WERE, THAT PROBATION
08:34:26 7 AGREED TO?

08:34:27 8 MR. BARTON: YES, YOUR HONOR.

08:34:29 9 THE COURT: OKAY. ALL RIGHT.

08:34:31 10 MS. KNIGHT, DOES THE UNITED STATES ATTORNEY HAVE ANY
08:34:33 11 WITNESSES?

08:34:34 12 MS. KNIGHT: NO, YOUR HONOR. WE ONLY HAVE THE VICTIM
08:34:37 13 STATEMENT THIS MORNING.

08:34:38 14 THE COURT: OKAY. AND MR. BARTON, DO YOU HAVE ANY
08:34:40 15 WITNESSES TODAY?

08:34:41 16 MR. BARTON: NO, BUT MR. KALBASI DOES WANT TO ADDRESS
08:34:43 17 THE COURT.

08:34:44 18 THE COURT: OKAY.

08:34:47 19 ALL RIGHT. AND AT THIS POINT, WE ARE NOT LOOKING AT AN
08:34:51 20 EVIDENTIARY HEARING THIS MORNING. I GUESS POTENTIALLY ON
08:34:54 21 RESTITUTION, WE MAY NEED TO LOOK AT THAT?

08:34:57 22 MR. BARTON: CORRECT.

08:34:58 23 MS. KNIGHT: YES.

08:34:58 24 THE COURT: OKAY. THAT'S FINE.

08:35:04 25 ALL RIGHT. AND MR. BARTON, IS ARRAIGNMENT FOR JUDGMENT

08:35:06 1 WAIVED?

08:35:07 2 MR. BARTON: YES, YOUR HONOR. SO WAIVED.

08:35:09 3 THE COURT: MR. KALBASI, HAVE YOU READ AND DISCUSSED
08:35:10 4 THE PRESENTENCE REPORT WITH YOUR ATTORNEY?

08:35:13 5 THE DEFENDANT: YES, YOUR HONOR.

08:35:13 6 THE COURT: ALL RIGHT. AND YOU KNOW WHAT YOU HAVE
08:35:16 7 BEEN CONVICTED OF?

08:35:17 8 MR. BARTON: YES, YOUR HONOR.

08:35:18 9 THE COURT: ALL RIGHT. LET ME JUST GO THROUGH THAT.

08:35:20 10 YOU PLED GUILTY AND WERE CONVICTED OF COUNT 3, COMPUTER
08:35:24 11 INTRUSION IN VIOLATION OF 18 U.S. CODE SECTION 1030 SUBDIVISION
08:35:32 12 (A) (2) (C), A MISDEMEANOR.

08:35:32 13 THE CRIME CARRIES A MAXIMUM PRISON TERM OF ONE YEAR, A
08:35:36 14 MAXIMUM FINE OF \$100,000, OR TWICE THE GAIN OR LOSS, WHICHEVER
08:35:41 15 IS GREATER; MAXIMUM SUPERVISED RELEASE OF ONE YEAR, AND A
08:35:44 16 MANDATORY SPECIAL ASSESSMENT OF \$25. VICTIM RESTITUTION IS
08:35:49 17 ALSO REQUIRED.

08:35:52 18 I HAVE CALCULATED THE GUIDELINE RANGE, THE BASE OFFENSE
08:35:56 19 LEVEL IS 6, THERE IS AN INCREASE OF PLUS SIX FOR THE VALUE OF
08:36:01 20 THE LOSS. THERE IS A DECREASE OF NEGATIVE 2 FOR ACCEPTANCE OF
08:36:06 21 RESPONSIBILITY, FOR AN ADJUSTED OFFENSE LEVEL OF 10.

08:36:08 22 YOUR CRIMINAL HISTORY HAS BEEN DETERMINED TO BE ONE BASED
08:36:12 23 UPON YOUR PRIOR RECORD.

08:36:14 24 MR. BARTON, IS THERE ANY OBJECTION TO THE GUIDELINE
08:36:17 25 CALCULATION?

08:36:18 1 MR. BARTON: NO, YOUR HONOR.

08:36:20 2 THE COURT: MS. KNIGHT, ANY OBJECTION?

08:36:21 3 MS. KNIGHT: NO, YOUR HONOR.

08:36:22 4 THE COURT: ALL RIGHT.

08:36:22 5 MR. KALBASI ENTERED A PLEA PURSUANT TO RULE 11 (C) (1) (A)
08:36:27 6 AND (B), AND THUS, MAY NOT WITHDRAW HIS PLEA BASED UPON THE
08:36:30 7 COURT'S SENTENCE; IS THAT CORRECT?

08:36:31 8 MR. BARTON: YES.

08:36:32 9 THE COURT: ALL RIGHT.

08:36:34 10 I HAVE CONSIDERED THE FINDINGS AND CALCULATIONS IN THE
08:36:37 11 PRESENTENCE REPORT, AND I CALCULATE THE ADVISORY GUIDELINE
08:36:42 12 RANGE TO BE 6 TO 12 MONTHS; SUPERVISED RELEASE OF ONE YEAR; A
08:36:46 13 FINE RANGE OF \$2,000 TO \$20,000; A SPECIAL ASSESSMENT OF \$25,
08:36:51 14 AND VICTIM RESTITUTION.

08:36:54 15 ANY OBJECTIONS TO THAT CALCULATION?

08:36:55 16 MS. KNIGHT: NO, YOUR HONOR.

08:36:56 17 MR. BARTON: NO, YOUR HONOR.

08:36:57 18 THE COURT: ALL RIGHT.

08:37:02 19 I WANT TO HEAR -- I THINK PERHAPS FIRST I WOULD LIKE TO
08:37:04 20 HEAR FROM TESLA, AND THEN I WOULD LIKE TO HEAR FROM COUNSEL ON
08:37:07 21 YOUR POSITIONS.

08:37:09 22 MS. KNIGHT: OKAY.

08:37:14 23 THE COURT: GOOD MORNING. WOULD YOU STATE YOUR NAME
08:37:17 24 AGAIN.

08:37:17 25 MS. JACKMAN: YES. CANDACE JACKMAN, LITIGATION

08:37:20 1 COUNSEL WITH TESLA.

08:37:21 2 THE COURT: GOOD MORNING.

08:37:22 3 MS. JACKMAN: AND THANK YOU VERY MUCH FOR THE
08:37:23 4 OPPORTUNITY TO TALK ABOUT THE LOSS THAT THE DEFENDANT INFLICTED
08:37:26 5 ON TESLA.

08:37:28 6 NIMA KALBASI WAS A WELL COMPENSATED ENGINEER FOR TESLA AND
08:37:31 7 HE OCCUPIED A POSITION OF TRUST THAT GAVE HIM ACCESS TO
08:37:35 8 LITERALLY TROVES OF CONFIDENTIAL INFORMATION OF TESLA'S.

08:37:38 9 AS WE WOULD LATER DISCOVER, HE ABUSED THAT TRUST WHILE AT
08:37:42 10 TESLA, TAKING PICTURES OF OUR CAD DESIGNS ON HIS PHONE,
08:37:46 11 INCLUDING IMAGES OF OUR MODEL X WHICH WAS OUR HIGHLY
08:37:50 12 ANTICIPATED, AND AT THAT TIME, UNRELEASED VEHICLE THAT HAD NOT
08:37:53 13 BEEN SOLD TO THE PUBLIC.

08:37:54 14 HE WENT EVEN FURTHER AFTER HIS EMPLOYMENT ENDED, HE STOLE
08:37:57 15 HIS FORMER MANAGER'S LOGIN CREDENTIALS AND HE HACKED INTO OUR
08:38:03 16 SYSTEM'S REMOTELY. HE REVIEWED HIS FORMER MANAGER'S E-MAIL AND
08:38:07 17 DOWNLOADED FROM OUR SERVERS, AMONG OTHER THINGS, HIGHLY
08:38:10 18 SENSITIVE, PERSONAL EMPLOYEE EVALUATIONS, HIGHLY CONFIDENTIAL
08:38:13 19 REPORTS ABOUT CUSTOMER ISSUES, AND OTHER DATA.

08:38:17 20 AFTER STEALING OUR CONFIDENTIAL INFORMATION, HE WENT
08:38:20 21 FURTHER AND DISSEMINATED IT TO VARIOUS SOURCES. HE SENT
08:38:24 22 CONFIDENTIAL EMPLOYEE EVALUATIONS TO THE TESLA EMPLOYEES WHO
08:38:27 23 WERE NOT PRIVY TO THE CONTENTS OF THE EVALUATIONS. HE POSTED
08:38:30 24 TESLA'S CONFIDENTIAL CAD DESIGNS, THE LITERAL ENGINEERING
08:38:34 25 DRAWINGS, ON A PUBLIC INTERNET FORUM, AND ASKED FORUM POSTERS

08:38:37 1 IF THEY HAD ANY QUESTIONS FOR HIM.

08:38:39 2 MR. KALBASI ALSO SHARED PICTURES OF THE MODEL X PROTOTYPE,
08:38:43 3 HIGHLY CONFIDENTIAL, WITH HIS FRIENDS AND FAMILY MEMBERS.

08:38:46 4 FINALLY, HE POSTED REPORTS ABOUT CUSTOMER ISSUES AS WELL
08:38:50 5 AS PHOTOGRAPHS THAT HE TOOK FROM INSIDE OF TESLA'S FACTORY
08:38:53 6 WHICH IS A STRICTLY NO PHOTOGRAPHS, HIGHLY SENSITIVE AREA.

08:38:58 7 AFTER OUR INTERNAL INVESTIGATION POINTED TO MR. KALBASI,
08:39:02 8 WE WERE FORCED TO EXPEND ENORMOUS SUMS TO CONFIRM THE IDENTITY
08:39:05 9 OF THE SUSPECT AND TO DISCOVER THE FULL EXTENT OF HIS
08:39:09 10 WRONGDOING, AND FURTHER, TO PREVENT MORE HARM TO US.

08:39:12 11 WE RETAINED CANADIAN COUNSEL AND FILED A STATEMENT OF
08:39:15 12 CLAIM IN CANADIAN COURTS WHICH IS A PRECURSOR THAT LET US TAKE
08:39:20 13 ADVANTAGE OF A DEVICE, IT'S LIKE A CIVIL WARRANT THAT LETS YOU
08:39:23 14 FIND ADDITIONAL INFORMATION WITH COURT'S BLESSING, WITH
08:39:25 15 AUDITORS, AND WITH BASICALLY A COURT REPRESENTATIVE THERE.

08:39:31 16 THAT AUTHORIZED THE SEARCH OF MR. KALBASI'S DIGITAL
08:39:34 17 DEVICES, HIS WORKPLACE, AND A SEARCH OF HIS E-MAIL ACCOUNTS
08:39:37 18 THAT HE USED TO PERPETRATE THE CRIMES.

08:39:40 19 THESE STRETCHES COST US TREMENDOUS SUMS AND WERE
08:39:43 20 ABSOLUTELY NECESSARY TO CONFIRMING HIS IDENTITY TO FIGURING OUT
08:39:47 21 EXACTLY WHAT HE HAD DONE WRONG, AND AGAIN, PREVENTS HIM FROM
08:39:52 22 INFLECTING FURTHER HARM ON TESLA.

08:39:55 23 THE CANADIAN ORDER AUTHORIZED AN INDEPENDENT SOLICITOR,
08:39:56 24 AUDITORS AND A PRIVATE INVESTIGATOR AND AS WELL AS TESLA'S
08:39:58 25 LEGAL COUNSEL, TO PARTICIPATE IN THE EXECUTION OF THE SEARCH.

08:40:01 1 THE ORDER ALSO OBLIGATED MR. KALBASI TO HELP US OUT TO
08:40:08 2 FIGURE OUT WHERE THE DOCUMENTS WERE, TO IDENTIFY THE DOCUMENTS,
08:40:10 3 TO GIVE US HIS LOGINS AND CREDENTIALS, AND TO HELP US TRACE ALL
08:40:14 4 THE EXTENT OF HIS WRONGDOING.

08:40:16 5 AT TESLA'S SOLE EXPENSE, OUR AUDITORS, THE INDEPENDENT
08:40:20 6 SOLICITOR, AND OUR LEGAL COUNSEL EXECUTED THE CIVIL SEARCH
08:40:24 7 WARRANT, ALSO CALLED AN ANTON PILLER ORDER, AND DISCOVERED SOME
08:40:27 8 OF THE INFORMATION ABOUT HIS WRONGDOING.

08:40:30 9 BUT NOT ALL OF IT WAS DISCOVERED AT FIRST, BECAUSE
08:40:33 10 MR. KALBASI OBSTRUCTED US. HE TOLD US HE ONLY HAD A FEW E-MAIL
08:40:38 11 ACCOUNTS, HE ONLY IDENTIFIED ONE COMPUTER THAT ULTIMATELY
08:40:41 12 WASN'T EVEN HIS, AND OUR AUDITORS DETERMINED BY LOOKING AT
08:40:44 13 VARIOUS OTHER E-MAILS, PUTTING PIECES TOGETHER, THERE WERE MORE
08:40:50 14 COMPUTERS, THERE WERE MORE E-MAIL ADDRESSES, THERE WERE MORE
08:40:52 15 DEVICES THAT HE HAD USED TO PERPETRATE THE CRIMES.

08:40:57 16 OUR AUDITORS ALSO FOUND EVIDENCE THAT HE HAD DELETED TESLA
08:41:01 17 RELATED E-MAILS FROM HIS E-MAIL ACCOUNTS. AND ALL OF THIS WAS
08:41:04 18 IN VIOLATION OF A CANADIAN COURT ORDER THAT REQUIRED HIM TO
08:41:08 19 HELP.

08:41:08 20 MR. KALBASI ALSO OBSTRUCTED OUR INVESTIGATION IN OTHER
08:41:10 21 WAYS. HE REFUSED TO GIVE US THE COURTESY EVEN OF AN EXTENSION
08:41:14 22 OF TIME TO FINISH INSPECTING HIS CELL PHONE WHEN WE NEEDED A
08:41:18 23 COUPLE MORE DAYS. WE HAD TO RUN TO COURT, ASK THE COURT FOR
08:41:21 24 MORE TIME SO THAT OUR AUDITORS COULD IMAGE THE CELL PHONE.

08:41:25 25 LATER WHEN HE ANSWERED QUESTIONS TO THE INDEPENDENT

08:41:28 1 SOLICITOR AND OUR COUNSEL, HE JUST GAVE CONFLICTING AND
08:41:32 2 ULTIMATELY NOT CREDIBLE ACCOUNTS OF WHY HE HAD MISLEAD US OF
08:41:37 3 ALL THE SOURCES OF INFORMATION.

08:41:38 4 MR. KALBASI'S CRIMES CAUSED PECUNIARY HARM, AND HIS
08:41:42 5 OBSTRUCTION REALLY FORCED US TO MULTIPLY OUR COSTS IN FIGURING
08:41:46 6 OUT WHO HAD DONE THIS, WHAT EXACTLY HAD HAPPENED, WHAT WAS OUT
08:41:51 7 THERE, AND HOW WE COULD PROTECT OURSELVES FROM FURTHER
08:41:53 8 DISSEMINATION OF OUR INFORMATION ONLINE.

08:41:55 9 AND THOSE COSTS, AS DETAILED IN OUR VICTIM'S IMPACT
08:41:57 10 STATEMENT, TOTALLED NEARLY \$300,000.

08:42:00 11 THEY INCLUDED OUR FORENSIC INVESTIGATION COSTS BY ERNST &
08:42:03 12 YOUNG, \$66,000.

08:42:06 13 IN INDEPENDENT SUPERVISING SOLICITOR, ANOTHER \$50,000.

08:42:10 14 OUR OWN PRIVATE LAW FIRM, \$153,000.

08:42:13 15 PRIVATE INVESTIGATOR, TO THE TUNE OF \$18,000.

08:42:16 16 AS WELL AS TESLA'S INFORMATION SECURITY EMPLOYEE
08:42:19 17 DEPARTMENT'S OWN TIME SPENT ON THIS, WHICH TOTALS ABOUT
08:42:23 18 \$20,000.

08:42:23 19 ALL OF THESE COSTS WERE DIRECTLY AND APPROXIMATELY AND
08:42:28 20 FORESEEABLY CAUSED BY WHAT MR. KALBASI DID, AND WE DO BELIEVE
08:42:32 21 THAT ALL OF THE COSTS, INCLUDING OUR PRIVATE COUNSEL FEES, ARE
08:42:35 22 RECOVERABLE UNDER THE NINTH CIRCUIT'S PRECEDENT.

08:42:37 23 AND WE WOULD BE HAPPY TO PARTICIPATE IN ANY EVIDENTIARY
08:42:40 24 HEARING ON THOSE ISSUES, BUT I UNDERSTAND THOSE AREN'T BEFORE
08:42:42 25 THE COURT AT THIS TIME.

08:42:45 1 AGAIN, TESLA'S ABILITY TO COMPETE DEPENDS ON PROTECTING
08:42:47 2 OUR MOST SENSITIVE INFORMATION AND PUNISHING THOSE WHO WOULD
08:42:52 3 TAKE IT AND DO US HARM, PARTICULARLY WHEN THEY DO SO FROM A
08:42:55 4 POSITION OF TRUST, AS MR. KALBASI DID.

08:42:58 5 IN LIGHT OF THE CONDUCT, WE RESPECTFULLY ASK THAT THE
08:43:01 6 COURT IMPOSE JAIL TIME AS WELL AS FULL RESTITUTION OF ALL COSTS
08:43:05 7 THAT WE INCURRED IN INVESTIGATING, RESPONDING TO AND MITIGATING
08:43:09 8 OUR HARM FROM THESE VERY SERIOUS OFFENSES.

08:43:12 9 THANK YOU.

08:43:12 10 THE COURT: THANK YOU FOR MAKING YOUR PRESENTATION.

08:43:16 11 ALL RIGHT. MS. KNIGHT, LET ME HEAR FROM THE GOVERNMENT
08:43:20 12 FIRST AND THEN MR. BARTON CAN ADDRESS ALL OF THE COMMENTS THAT
08:43:24 13 HAVE BEEN MADE, AND I WILL HEAR FROM MR. KALBASI.

08:43:26 14 MS. KNIGHT: YES, YOUR HONOR.

08:43:29 15 MR. KALBASI INFLECTED SIGNIFICANT HARM ON TESLA, AND WE
08:43:34 16 BELIEVE THAT A PERIOD OF TIME OF HOME CONFINEMENT IS
08:43:40 17 APPROPRIATE. THE GUIDELINES ARE ADJUSTED OFFENSE LEVEL 10,
08:43:45 18 WHICH YIELDS A RANGE OF 6 TO 12 MONTHS.

08:43:47 19 WE ARE ASKING FOR SIX MONTHS HOME CONFINEMENT AS A
08:43:50 20 CONDITION OF FIVE YEARS PROBATION. WE KNOW HE LIVES IN CANADA,
08:43:53 21 BUT HE DOES HAVE A BROTHER THAT LIVES IN NEW YORK, HE COULD
08:43:57 22 LIVE WITH HIM FOR A PERIOD OF TIME. WE BELIEVE THIS WILL SEND
08:44:00 23 A MESSAGE TO HIM THAT HIS CONDUCT IS SERIOUS.

08:44:04 24 THE COURT: AND ON A MISDEMEANOR, I CAN IMPOSE FIVE
08:44:06 25 YEARS OF PROBATION?

08:44:07 1 MS. KNIGHT: YES, YOU CAN. THAT'S THE MAXIMUM AMOUNT
08:44:09 2 OF SUPERVISION.

08:44:10 3 THE COURT: OKAY. SO THIS WOULD BE A PROBATIONARY
08:44:13 4 SENTENCE?

08:44:13 5 MS. KNIGHT: IT WOULD BE A PROBATIONARY SENTENCE.

08:44:15 6 THE GOVERNMENT LOOKED AT THE TOTALITY OF THE CIRCUMSTANCES
08:44:18 7 IN THIS CASE, INCLUDING THE COLLATERAL CONSEQUENCES OF THIS
08:44:22 8 OFFENSE ON MR. KALBASI, IT DOESN'T MINIMIZE THE AGGRAVATED
08:44:27 9 NATURE OF THE CONDUCT, BUT WE TOOK THAT INTO CONSIDERATION WITH
08:44:29 10 OUR RECOMMENDATION FOR A HOME CONFINEMENT SENTENCE.

08:44:35 11 SO WE WOULD SUBMIT ON THAT.

08:44:36 12 THE COURT: OKAY. THANK YOU.

08:44:37 13 MR. BARTON.

08:44:38 14 MR. BARTON: THE DEFENSE CONCURS WITH THE
08:44:42 15 RECOMMENDATION OF THE PROBATION DEPARTMENT FOR A NONCUSTODIAL
08:44:47 16 SENTENCE. AND THE REASONS FOR PROBATION'S POSITION AND THE
08:44:54 17 REASONS WHY WE CONCUR ARE SET FORTH AT LENGTH IN OUR SENTENCING
08:44:57 18 MEMORANDUM.

08:44:59 19 IN SHORT, IT IS THE NATURE OF THE CONDUCT, THERE WAS A
08:45:02 20 COMPUTER INTRUSION OF THE FORMER EMPLOYER, AND MR. KALBASI HAS
08:45:07 21 ACKNOWLEDGED THAT AND COOPERATED.

08:45:12 22 THERE'S A VERY DIFFERENT ACCOUNT OF WHAT HAPPENED IN THE
08:45:14 23 CANADIAN LITIGATION. I WON'T GO INTO THAT IN DETAIL, BUT
08:45:21 24 MR. KALBASI DID NOT OBSTRUCT THAT, AND HE CONSENTED TO THE
08:45:24 25 JUDGMENT AND HE SIGNED AN AFFIDAVIT THAT ACKNOWLEDGED EXACTLY

08:45:28 1 WHAT HE DID, AND THE CANADIAN COUNSEL WHO REPRESENTED
08:45:37 2 MR. KALBASI IN THAT HAS PROVIDED THEIR VIEW OF WHAT HAPPENED,
08:45:42 3 WHICH INVOLVES MR. KALBASI COOPERATING 100 PERCENT WITH THE
08:45:47 4 EFFORTS BY TESLA AND TESLA LAWYERS TO GET THE INFORMATION THEY
08:45:53 5 WERE ENTITLED TO UNDER THE ANTON PILLER ORDER.

08:45:57 6 IF WE LOOK AT MR. KALBASI'S LIFE, HE HAS A LIFETIME OF
08:46:00 7 GOOD BEHAVIOR, WITH THE EXCEPTION OF THIS INCIDENT. HE HAS AN
08:46:05 8 IMPRESSIVE STORY OF OVERCOMING INCREDIBLE ADVERSITY FROM
08:46:09 9 IMMIGRATING TO THIS COUNTRY AS AN ADOLESCENT WITH NO ENGLISH
08:46:15 10 ABILITIES, TO MOVING TO CANADA, TO SUCCEEDING IN HIGH SCHOOL,
08:46:17 11 SUCCEEDING IN COLLEGE, RISING TO BECOME AN ACCOMPLISHED AND
08:46:20 12 CREATIVE AND PRODUCTIVE ENGINEER.

08:46:26 13 THE REMORSE THAT HE HAS, AND I THINK THAT YOU WILL SEE, IS
08:46:29 14 AUTHENTIC AND DEEP AND VERY MUCH A PART OF WHO HE IS, IS REALLY
08:46:35 15 EXTRAORDINARY AND UNUSUAL. AND I THINK THIS INCIDENT HAS
08:46:40 16 DEFINED MR. KALBASI IN A WAY THAT IS NOT AT ALL COMMON FOR
08:46:47 17 PEOPLE WHO ARE IN HIS POSITION.

08:46:51 18 THE CONSEQUENCES THAT HE HAS SUFFERED AS A RESULT OF THIS
08:46:55 19 ARE ALSO EXTRAORDINARY. HE LOST HIS JOB, HE LOST FIVE
08:47:01 20 SUBSEQUENT JOBS. HE DECIDED TO TRY TO REBUILD HIMSELF AND GET
08:47:06 21 READY FOR THE NEXT CHAPTER AND APPLY FOR GRADUATE SCHOOL. HE
08:47:10 22 WAS ADMITTED TENTATIVELY INTO THE GRADUATE SCHOOL AND THEN THAT
08:47:13 23 ADMISSION WAS RESCINDED, AND HE BELIEVES THAT, AND I THINK IT'S
08:47:16 24 ACCURATE, WAS BECAUSE OF THIS INCIDENT WHEN THE SCHOOL, AFTER
08:47:22 25 GIVING THE TENTATIVE ACCEPTANCE LETTER, DID A MORE EXTENSIVE

08:47:24 1 BACKGROUND CHECK, THEY WITHDREW THEIR ACCEPTANCE, THAT WAS TO
08:47:28 2 GO TO BUSINESS SCHOOL IN CANADA.

08:47:30 3 HE'S REALLY UNABLE, AS A RESULT OF THIS EVENT, TO WORK IN
08:47:34 4 HIS CHOSEN FIELD, EXCEPT THROUGH SELF-EMPLOYMENT, WHICH WAS
08:47:40 5 WHAT HE'S ATTEMPTING TO DO RIGHT NOW.

08:47:43 6 HE ACCEPTED RESPONSIBILITY FROM THE BEGINNING. HIS
08:47:48 7 AFFIDAVIT IN THE CANADIAN COURT DETAILS VERY SPECIFICALLY WHAT
08:47:53 8 HE DID AND ACKNOWLEDGES IT. PART OF THE JUDGMENT THAT WAS
08:47:57 9 ORDERED BY THE CANADIAN COURT AND THAT MR. KALBASI CONSENTED TO
08:48:02 10 INVOLVED VERY SPECIFIC CONDUCT PROHIBITIONS, ACCESSING TESLA'S
08:48:10 11 COMPUTERS OR COMMUNICATING WITH TESLA IN ANY WAY. HE HAS
08:48:14 12 COMPLIED WITH THAT JUDGMENT IN EVERY RESPECT. HE HAS ACCEPTED
08:48:19 13 RESPONSIBILITY. HE ALSO HAS INCREDIBLE COMMUNITY SUPPORT, AND
08:48:27 14 I THINK IS ABLE TO LAND ON HIS FEET AND MAKE SOMETHING OF
08:48:30 15 HIMSELF.

08:48:30 16 AS THE COURT CAN SEE IN THE COURTROOM TODAY IS HIS WIFE,
08:48:34 17 HIS BROTHER, HIS UNCLES, HIS AUNTS, HIS COUSINS, OTHER FAMILY
08:48:42 18 MEMBERS AND FRIENDS FROM THE BAY AREA. MANY HAVE COME FROM
08:48:45 19 TORONTO, NEW YORK, LOS ANGELES, IN ORDER TO BE HERE TO SHOW
08:48:48 20 THEM THAT THEY STAND BY HIM REGARDLESS OF HIS FAILURE ON THIS
08:48:52 21 OCCASION.

08:48:55 22 I DON'T KNOW IF THE COURT WANTS ME TO ADDRESS THE NO
08:48:58 23 COMPUTER RECOMMENDATION.

08:48:59 24 THE COURT: WELL, YES.

08:49:04 25 I WILL TELL YOU THAT I AM INCLINED TO IMPOSE IT BECAUSE IT

08:49:10 1 STILL ALLOWS THE PROBATION OFFICER TO APPROVE COMPUTER USE, AND
08:49:15 2 I WOULD AUTHORIZE THE PROBATION OFFICER TO SEEK MODIFICATION OF
08:49:21 3 THAT PROVISION IF THERE'S A YEAR OF FULL COMPLIANCE.

08:49:25 4 FIVE YEARS IS A LONG TIME TO HAVE THAT, BUT I'M FEELING
08:49:29 5 THE NEED FOR SOME MONITORING.

08:49:33 6 MR. BARTON: I WOULD ASK THE COURT TO FOLLOW THE LAW
08:49:36 7 AND NARROWLY TAILOR THE COMPUTER RESTRICTION.

08:49:40 8 THERE'S THE U.S. SUPREME COURT DECISION THAT CAME OUT
08:49:43 9 YESTERDAY IN PACKINGHAM V. NORTH CAROLINA WHICH TALKS ABOUT
08:49:47 10 CYBERSPACE ON THE INTERNET AS BEING THE MODERN PUBLIC SQUARE
08:49:51 11 AND THE IMPORTANCE OF INDIVIDUAL'S FIRST AMENDMENT RIGHTS TO
08:49:58 12 INTERACT WITH HIS COMMUNITY, FOLLOW PUBLIC EVENTS.

08:50:02 13 AND IN MR. KALBASI'S CASE, HE NOT ONLY NEEDS A COMPUTER IN
08:50:06 14 ORDER TO DO HIS WORK, IN ORDER TO BRING TO COMPLETION THE
08:50:11 15 PROJECT HE'S SET UP AS HIS SELF-EMPLOYMENT EFFORT TO CONTINUE
08:50:16 16 IN HIS CAREER AND TO DO SOMETHING OTHER THAN SHOVEL SNOW AND
08:50:20 17 GARDENING IN TORONTO, HE NEEDS IT IN ORDER TO COMMUNICATE WITH
08:50:24 18 HIS FAMILY, WHICH IS VERY EXTENDED, AND TO FOLLOW PUBLIC
08:50:32 19 EVENTS.

08:50:32 20 SO MY SUGGESTION WAS THAT THE COURT ORDER A COMPUTER
08:50:37 21 RESTRICTION NOT TO ACCESS WEBSITES WITHOUT PERMISSION FROM THE
08:50:42 22 OWNER OF THOSE WEBSITES AND NOT TO USE ANYTHING THAT HIDES HIS
08:50:49 23 IDENTITY OR THAT IS A FALSE IDENTITY TO NAVIGATE THE INTERNET.

08:50:55 24 ALTERNATIVELY, THE COURT COULD IMPOSE A RESTRICTION NOT TO
08:50:58 25 USE THE INTERNET FOR SOME PURPOSES, BUT I ASK THE COURT NOT TO

08:51:03 1 RESTRICT THE INTERNET USE AS IT GOES TO HIS WORKING. AS THE
08:51:10 2 PROBATION REPORT RECOMMENDS, HE CAN'T DO HIS JOB IF HE CAN'T
08:51:16 3 ACCESS A COMPUTER OR A CELL PHONE OR A THERMOSTAT.

08:51:23 4 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING, AND I
08:51:27 5 DON'T DISAGREE WITH YOU ON THE IMPORTANCE OF A COMPUTER IN ALL
08:51:31 6 OF OUR LIVES, AND ESPECIALLY CONSIDERING MR. KALBASI'S WORK,
08:51:35 7 BUT I THINK THE KINDS OF LIMITATIONS THAT YOU ARE SUGGESTING
08:51:39 8 ARE BEST WORKED OUT IN THIS GENERAL PROBATIONARY TERM THAT THE
08:51:47 9 PROBATION OFFICER CAN SET THOSE CRITERIA AS NECESSARY FOR THE
08:51:55 10 AUTHORIZATION THAT PROBATION WOULD ALLOW.

08:51:57 11 I'M NOT REALLY IN A POSITION TO GO THROUGH THE SPECIFIC
08:52:02 12 KINDS OF RESTRICTIONS THAT YOU WOULD BE SUGGESTING AND HAVE
08:52:06 13 WHAT NEEDS TO BE A FAIRLY IN-DEPTH CONVERSATION WITH
08:52:09 14 MR. KALBASI ABOUT THE RANGE OF ACCESS THAT HE REASONABLY NEEDS
08:52:14 15 TO BE A CITIZEN AND A PRODUCTIVE WORKING ENGINEER, BUT A
08:52:20 16 PROBATION OFFICER COULD CERTAINLY DO THAT AND PUT REASONABLE
08:52:23 17 LIMITATIONS.

08:52:26 18 I WOULD EXPECT THAT THERE WILL BE AUTHORIZATION BY THE
08:52:30 19 PROBATION OFFICER WITH REASONABLE TERMS, AND THAT FRANKLY, YOU
08:52:36 20 COULD COME BACK TO COURT IF THOSE TERMS ARE NOT REASONABLE.

08:52:39 21 BUT I'M NOT IN A -- I DON'T FEEL IT'S APPROPRIATE FOR ME,
08:52:43 22 FOR THE COURT TO OUTLINE THOSE TERMS.

08:52:46 23 MR. BARTON: WELL, I NOTE THAT MR. KALBASI HAS BEEN
08:52:50 24 RELEASED SINCE AUGUST 2015 WITHOUT RESTRICTIONS ON HIS COMPUTER
08:52:55 25 USE, AND HE HAS NOT ENGAGED IN ANY MISCONDUCT ON THE COMPUTER,

08:53:03 1 AND HE HAS MADE INCREDIBLE ACCOMPLISHMENTS IN TRYING TO BUILD A
08:53:08 2 PROJECT TO SUPPORT HIMSELF. AND IF THE COURT DOESN'T CARVE OUT
08:53:13 3 THE ABILITY FOR HIM TO DO HIS WORK AND USE THE COMPUTER AT
08:53:17 4 LEAST FOR HIS WORK, THEN IT'S ESSENTIALLY A SENTENCE TO
08:53:26 5 SHOVELLING SNOW AND GARDENING IN TORONTO UNTIL THERE'S AN
08:53:33 6 ADEQUATE ACCOMMODATION.

08:53:35 7 AND I THINK IT'S APPROPRIATE FOR THE COURT TO NARROWLY
08:53:37 8 TAILOR ITS ORDER TO NOT LEAVE MR. KALBASI UNABLE TO WORK. AND
08:53:42 9 THAT IS AN EXPRESS GOAL OF PROBATION, TO ENCOURAGE SOMEBODY TO
08:53:49 10 MAINTAIN EMPLOYMENT, TO BE A PRODUCTIVE CITIZEN, TO CONTRIBUTE
08:53:55 11 TO THE COMMUNITY AND THE COMPUTER RESTRICTION WILL PROHIBIT HIM
08:53:59 12 FROM DOING THAT, ULTIMATELY.

08:54:01 13 THE COURT: OKAY. ANY FURTHER COMMENTS YOU WANT TO
08:54:10 14 MAKE BEFORE I HEAR FROM MR. KALBASI?

08:54:12 15 MR. BARTON: NO, YOUR HONOR.

08:54:13 16 THE COURT: ALL RIGHT. AND I AM INTERESTED IN
08:54:16 17 HEARING FROM MR. KALBASI.

08:54:18 18 THE DEFENDANT: THANK YOU, YOUR HONOR.

08:54:20 19 IF I MAY, I PREPARED SOMETHING.

08:54:22 20 THE COURT: SURE.

08:54:23 21 THE DEFENDANT: IT WOULD DO NO JUSTICE TO THE LAST
08:54:29 22 THREE YEARS OF MY LIFE TO STAND HERE AND APOLOGIZE, BECAUSE I
08:54:32 23 APOLOGIZE. I BELIEVE THAT THE APOLOGY WOULD COME NOWHERE NEAR
08:54:39 24 TO THE SENSE OF LOSS AND REGRET THAT I CONSTANTLY FEEL.

08:54:43 25 I WISH TO APOLOGIZE NOT JUST TO VICTIMS OF MY ACTIONS LIKE

08:54:48 1 MY EX-BOSS, AND THOSE AFFECTED AT TESLA, BUT ALSO TO MY WIFE,
08:54:52 2 MY PARENTS, MY FAMILY AND FRIENDS WHO ARE HERE TODAY, AND TO
08:54:56 3 THOSE THAT SUPPORT ME REGARDLESS OF MY MISTAKE. I WILL NEVER
08:54:59 4 EVER LET THEM DOWN AGAIN.

08:55:01 5 AND I HOPE YOU CAN SEE THAT THIS MEANS EVERYTHING TO ME.
08:55:05 6 THAT THESE PEOPLE HAVE KEPT ME ALIVE FOR THE PAST THREE YEARS.
08:55:08 7 IT HAS BEEN NOT EASY FOR THEM. AND I OWE THEM EVERYTHING.

08:55:12 8 I CAN ENVISION A DIFFERENT VERSION OF ME, ONE WHERE I'M
08:55:16 9 LIVING IN A WORLD THAT IS BY NO MEANS EXTRAORDINARY. IN FACT,
08:55:20 10 IT'S QUITE BORING AND MUNDANE TO MANY. AND YET IT IS SO
08:55:27 11 IMPORTANT TO ME. THE LIFE I'M TALKING ABOUT IS THE
08:55:29 12 CONTINUATION OF MY LIFE AS IT WERE THREE YEARS AGO, WITHOUT THE
08:55:33 13 MISTAKE THAT HAS LEAD ME HERE BEFORE YOU TODAY.

08:55:36 14 IT IS A LIFE OF CONTINUING TO LIVE BY MY MORAL STANDARDS,
08:55:41 15 OF NOT SUCCUMBING TO PETTY AND IMMATURE TEMPTATION TO SEEK
08:55:45 16 REVENGE WHEN I LOST MY DREAM JOB.

08:55:48 17 I WENT FROM A 14-YEAR OLD IMMIGRANT BOY WHO DIDN'T SPEAK
08:55:52 18 ENGLISH, TO THE SUCCESSFUL ENGINEER WHO GOT THE CHANCE TO WORK
08:55:54 19 AT TESLA, HIS DREAM COMPANY. HAD I BEEN WISER, I WOULD STILL
08:55:58 20 BE IN MY FIELD WORKING TO MAKE A DIFFERENCE. I WOULD STILL
08:56:01 21 HAVE THE HOUSE I BUILT, SO MUCH OF IT WITH MY OWN TWO HANDS. I
08:56:06 22 WOULD HAVE BEEN ABLE TO KEEP MY SICK MOTHER FROM LEAVING TO A
08:56:11 23 HOSTILE ENVIRONMENT IN IRAN BECAUSE OF THAT.

08:56:15 24 I WOULD HAVE BEEN ABLE TO DO RIGHT BY MY WIFE AND SUPPORT
08:56:19 25 HER THROUGH THE LAST THREE YEARS OF HER SCHOOL, INSTEAD OF HER

08:56:23 1 SUPPORTING ME THROUGH HER STUDENT LOANS. AND ABOVE ALL, I
08:56:26 2 COULD STILL HOLD MY HEAD UP IN PRIDE. AND I WOULD BE SOMEONE
08:56:30 3 MY FRIENDS AND FAMILY COULD BE PROUD OF, AND THAT COULD HAVE
08:56:33 4 BEEN ME.

08:56:36 5 THAT'S NOT THE REALITY I HAVE NOW. NOW I JUST HOPE I
08:56:39 6 REMAIN INVISIBLE ENOUGH THAT POTENTIAL EMPLOYERS AND NEW
08:56:42 7 COWORKERS AND OTHERS JUST DON'T BOTHER TO GOOGLE ME. I'VE LOST
08:56:48 8 EVERYTHING I HAD FINANCIALLY, AND I'M IN A HOLE SO DEEP, I WILL
08:56:52 9 SPEND THE REST OF MY LIFE TRYING TO DIG MYSELF OUT OF IT.

08:56:54 10 I HAVE DAMAGED MY CREDIBILITY AS AN ENGINEER, IN THE ONLY
08:56:59 11 PROFESSION I KNOW AND TRULY LOVE, COMPOUNDING THE FINANCIAL
08:57:03 12 PROBLEMS THAT I FACE.

08:57:04 13 THIS MORAL FAILING OF MINE AND ALL THE CONSEQUENCES, HAVE
08:57:09 14 MADE ME UNDERSTAND THAT FOREVER -- I AM FOREVER DEFINED BY MY
08:57:13 15 ACTIONS.

08:57:15 16 AND I HAVE TAKEN FROM THE START, RESPONSIBILITY FOR THESE
08:57:18 17 ACTIONS. FROM THE DAY THE TEAM OF LAWYERS AND INVESTIGATORS
08:57:23 18 POURED INTO MY WORKPLACE, I HAVE DONE WHAT I BELIEVE TO BE THE
08:57:26 19 RIGHT THING.

08:57:28 20 I COMPLIED WITH EVERY REQUEST TESLA MADE IN THE CIVIL
08:57:33 21 CASE. I AGREED TO THE CONSENT JUDGMENT BY THE ONTARIO COURT.
08:57:37 22 I AGREED TO THE PLEA AGREEMENT IN THIS CRIMINAL CASE. I SIGNED
08:57:39 23 AN AFFIDAVIT COMPOSED BY TESLA'S LAWYERS REQUIRING ME TO PAY
08:57:44 24 \$15,000, EVEN THOUGH I HAD NO JOB, I JUST BORROWED YET MORE
08:57:48 25 MONEY TO DO THAT.

08:57:49 1 I MADE COUNTLESS TRIPS ACROSS THE U.S./CANADIAN BORDER TO
08:57:53 2 ATTEND THIS COURT AND OTHER MEETINGS, AND EACH TIME I SPENT
08:57:56 3 HOURS BEING QUESTIONED BY CUSTOMS AGENTS BECAUSE I AM NOW
08:57:59 4 CONSIDERED A THREAT BECAUSE I WAS FIRST ARRESTED AT THE BORDER.

08:58:04 5 I ACCEPT AND UNDERSTAND THIS IS ALL PART OF PAYING THE
08:58:07 6 PRICE FOR MY MISTAKE, I DON'T WISH FOR ANYONE TO FEEL SORRY FOR
08:58:12 7 ME, I AM SIMPLY STATING MY TRUTH AND HOPING THAT THE COURT CAN
08:58:16 8 SEE THAT THE ALTERNATE VERSION OF ME IS NOT AN IDLE FANTASY, IT
08:58:20 9 IS STILL POSSIBLE.

08:58:21 10 AND DESPITE MY VIOLATING THE TRUST OF MY FORMER EMPLOYER,
08:58:25 11 I'M STILL CAPABLE OF PRODUCING GOOD IN THIS WORLD. GIVEN THE
08:58:29 12 CHANCE, I WILL DO EVERYTHING IN MY POWER TO MAKE THIS ALTERNATE
08:58:32 13 VERSION OF ME A REALITY. MOST OF ALL, I'M ANXIOUS TO REDEEM
08:58:36 14 MYSELF IN FRONT OF MY WIFE, MY FAMILY AND MY COMMUNITY. AND I
08:58:40 15 HOPE YOU WILL GIVE ME THE OPPORTUNITY TO START THIS TODAY.

08:58:43 16 THANK YOU.

08:58:43 17 THE COURT: THANK YOU.

08:58:44 18 ANYTHING ELSE, MR. BARTON?

08:58:47 19 MR. BARTON: NO, YOUR HONOR.

08:58:48 20 THE COURT: DOES THE PROBATION OFFICER HAVE ANYTHING
08:58:50 21 TO SAY?

08:58:50 22 PROBATION OFFICER: YES, YOUR HONOR.

08:58:52 23 I JUST WANTED TO CLARIFY THAT THE SPECIAL CONDITION IS
08:58:55 24 THAT IT'S NOT THAT -- THE SPECIAL CONDITION FOR THE COMPUTER
08:59:00 25 MONITORING IS NOT THAT MR. KALBASI CANNOT OWN A COMPUTER, IT'S

08:59:04 1 JUST THAT HE WOULD BE MONITORED.

08:59:06 2 ALSO, I UNDERSTAND THAT MR. KALBASI LIVES IN TORONTO,
08:59:11 3 CANADA, SO IN ORDER FOR A CONDITION LIKE THAT TO BE IMPOSED, HE
08:59:15 4 WOULD ACTUALLY HAVE TO LIVE IN THE UNITED STATES.

08:59:20 5 I'M NOT SURE IF IT'S POSSIBLE FOR HIM TO.

08:59:24 6 THE COURT: I'M LOOKING AT CONDITION NUMBER 2.

08:59:28 7 PROBATION OFFICER: YES.

08:59:29 8 THE COURT: IT DOESN'T SAY ANYTHING -- IT DOESN'T
08:59:35 9 DIRECTLY SAY ANYTHING ABOUT MONITORING.

08:59:39 10 PROBATION OFFICER: I'M SORRY, CONDITION NUMBER 3.
08:59:43 11 IT'S A COMPUTER AND INTERNET MONITORING PROGRAM.

08:59:56 12 THE COURT: WELL, IT SEEMS LIKE NUMBER 3 IS THE ONE
08:59:58 13 THAT MR. BARTON WOULD LIKE ME TO ELIMINATE.

09:00:00 14 MR. BARTON: NUMBER 2 IS THE ONE THAT'S THE PROBLEM.

09:00:02 15 THE COURT: BUT NUMBER 3 IS GOING TO REQUIRE HIM TO
09:00:04 16 MOVE TO THE UNITED STATES IN ORDER TO BE MONITORED. I DON'T
09:00:07 17 THINK THAT WAS PART OF MR. KALBASI'S PLAN, WAS IT?

09:00:09 18 MR. BARTON: NO.

09:00:14 19 THE COURT: THAT'S WHAT I'M JUST BEING TOLD, CORRECT.

09:00:16 20 PROBATION OFFICER: IN ORDER FOR NUMBER 2 OR NUMBER 3
09:00:18 21 TO APPLY, HE WOULD HAVE TO LIVE IN THE UNITED STATES.

09:00:20 22 THE COURT: I DON'T UNDERSTAND WHY HE WOULD HAVE TO
09:00:22 23 LIVE IN THE U.S. FOR NUMBER 2, BECAUSE THAT JUST SAYS HE CAN'T
09:00:26 24 POSSESS OR USE WITHOUT PRIOR APPROVAL.

09:00:32 25 NUMBER 3 TALKS ABOUT ENROLLING IN THE PROGRAM, AND I

09:00:35 1 UNDERSTAND THAT THAT CAN ONLY BE DONE FROM THE U.S., BUT I
09:00:39 2 DON'T UNDERSTAND WHY NUMBER 2 CAN'T BE DONE FROM CANADA.

09:00:43 3 PROBATION OFFICER: ACTUALLY, YOU ARE CORRECT,
09:00:44 4 YOUR HONOR.

09:00:45 5 IT WOULD BE IF HE WERE TO BE PLACED ON PROBATION, HE WOULD
09:00:49 6 HAVE -- IN ORDER FOR US TO MONITOR HIM, HE WOULD HAVE TO BE IN
09:00:52 7 THE UNITED STATES.

09:00:52 8 THE COURT: TO MONITOR HIM GENERALLY.

09:00:54 9 PROBATION OFFICER: YES, YOUR HONOR.

09:00:56 10 THE COURT: WAS THAT UNDERSTOOD?

09:01:01 11 MR. BARTON: NO, IT WASN'T. MR. KALBASI'S LIFE IS IN
09:01:07 12 TORONTO.

09:01:08 13 THE COURT: WOULD HE EVEN BE ABLE TO LIVE IN THE
09:01:10 14 U.S.?

09:01:10 15 MR. BARTON: HE IS A LEGAL PERMANENT RESIDENT OF THE
09:01:13 16 UNITED STATES. HIS FAMILY, HIS BUSINESS, HIS WIFE, EVERYTHING
09:01:19 17 IS IN TORONTO.

09:01:25 18 AND I DON'T WANT TO JUMP AHEAD TO THE ISSUE OF, IF THE
09:01:28 19 COURT WERE TO IMPOSE SOME TIME OF HOME DETENTION, I DON'T
09:01:34 20 UNDERSTAND WHY THAT COULDN'T BE ACCOMPLISHED WITH ADEQUATE
09:01:42 21 TECHNOLOGY LIVING IN TORONTO, PEOPLE USE GPS MONITORING WHICH
09:01:46 22 IS AN INTERNET-BASED TECHNOLOGY.

09:01:48 23 THE COURT: I'M MORE CONCERNED WITH THE FIVE YEARS OF
09:01:51 24 PROBATION. I'M BEING TOLD HE HAS TO LIVE IN THE U.S. FOR THE
09:01:55 25 NEXT FIVE YEARS.

09:01:56 1 PROBATION OFFICER: YES, YOUR HONOR. IN ORDER FOR
09:01:58 2 THAT TO BE --

09:01:59 3 THE COURT: I MEAN, THAT'S OUTSIDE OF WHAT I
09:02:01 4 UNDERSTOOD, BUT IT'S CLEARLY OUTSIDE OF WHAT YOU UNDERSTOOD.

09:02:04 5 MR. BARTON: I DID NOT UNDERSTAND THAT ANYBODY WAS
09:02:07 6 SUGGESTING THAT MR. KALBASI BE REQUIRED TO LIVE IN THE
09:02:09 7 UNITED STATES. HE DOESN'T LIVE HERE.

09:02:16 8 THE COURT: THAT'S BEEN CLEAR TO ME THE WHOLE TIME
09:02:18 9 THAT HE DOESN'T LIVE HERE.

09:02:20 10 SO, I MEAN, I CERTAINLY RESPECT THE LIMITATIONS THAT THE
09:02:24 11 PROBATION DEPARTMENT WOULD HAVE IN MONITORING, EVEN IF I
09:02:27 12 EXCLUDE NUMBER 3, BUT YOU ARE TALKING ABOUT GENERAL MONITORING
09:02:32 13 OF A PROBATIONER.

09:02:35 14 PROBATION OFFICER: YOUR HONOR, THE RECOMMENDATION
09:02:36 15 WAS THAT IF MR. KALBASI WERE TO REMAIN IN THE UNITED STATES, HE
09:02:41 16 WOULD GET THE FIVE YEARS PROBATION.

09:02:44 17 THE COURT: AND IF NOT, HE SHOULD HAVE A PRISON
09:02:48 18 SENTENCE AND BE DONE WITH IT.

09:02:50 19 PROBATION OFFICER: PROBATION DIDN'T RECOMMEND A JAIL
09:02:52 20 SENTENCE.

09:02:52 21 THE COURT: I KNOW THAT. SO YOU LEFT ME HANGING
09:02:56 22 THERE. IF HE DOESN'T LIVE IN THE U.S., WHAT DO I DO?

09:03:00 23 PROBATION OFFICER: AN OPTION, YOUR HONOR, WOULD BE
09:03:04 24 THAT MR. KALBASI COULD SUBMIT MONTHLY WORKSHEETS TO THE
09:03:08 25 PROBATION OFFICE FROM CANADA.

09:03:11 1 THE COURT: YOU WOULD BE WILLING TO MONITOR HIM THAT
09:03:13 2 WAY?

09:03:13 3 PROBATION OFFICER: YES, YOUR HONOR.

09:03:14 4 THE COURT: I REALLY APPRECIATE THAT.

09:03:15 5 MS. KNIGHT: YOUR HONOR, IN PRIOR CASES, THIS WAS
09:03:17 6 YEARS AGO, I'VE HAD DEFENDANTS LIVING OUTSIDE THE UNITED STATES
09:03:20 7 WHO PHONE IN, THEY ARE MORE ON A TIGHTER LEASH WITH MONTHLY
09:03:23 8 REPORTS, WEEKLY PHONE CALLS, CONFIRMATION OF COMMUNITY SERVICE,
09:03:27 9 I'VE HAD CRAFTING OF A SENTENCE --

09:03:31 10 THE COURT: GOOD. OKAY. I THINK MAYBE WE'VE WORKED
09:03:34 11 OUR WAY THROUGH THAT. THANK YOU.

09:03:38 12 BUT NUMBER 3 COULDN'T BE ACTUALLY PHYSICALLY BE DONE IF HE
09:03:44 13 LIVED IN CANADA.

09:03:46 14 PROBATION OFFICER: THAT'S CORRECT, YOUR HONOR.

09:03:47 15 THE COURT: OKAY. WELL, I KNOW HOW TO HANDLE THAT.

09:03:57 16 ALL RIGHT. THIS CASE IS VERY TROUBLING BECAUSE THE AMOUNT
09:04:00 17 OF HARM WAS EXTRAORDINARY. THE DEGREE OF, AND MR. KALBASI, YOU
09:04:09 18 SAID IT BEST YOURSELF, IMMATURITY, BAD JUDGMENT,
09:04:13 19 SHORTSIGHTEDNESS, WAS PROFOUND IN THIS CASE, ESPECIALLY FROM A
09:04:20 20 PERSON OF YOUR BACKGROUND AND EDUCATION, AND WITH THE KIND OF
09:04:23 21 SUPPORT AND UPBRINGING THAT YOU'VE HAD OF A STRONG FAMILY.

09:04:27 22 I GREATLY APPRECIATE ALL OF THE LETTERS OF SUPPORT THAT I
09:04:30 23 WAS ABLE TO READ AND THANK THE FAMILY AND FRIENDS AND BUSINESS
09:04:35 24 ASSOCIATES WHO TOOK THE TIME AND EXPOSED THEMSELVES TO THE
09:04:38 25 COURT TO PREPARE THOSE LETTERS. THEY MEAN A GREAT DEAL.

09:04:46 1 AND I AM VERY MOVED BY YOUR RECITATION OF THE CONSEQUENCES
09:04:55 2 THAT YOU HAVE SUFFERED SINCE THIS EVENT AND CERTAINLY NEED TO
09:05:00 3 CONSIDER THIS IS A MISDEMEANOR AND THERE WAS NO VIOLENCE
09:05:05 4 INVOLVED IN IT. AND THOSE ARE IMPORTANT CONSIDERATIONS FOR ME.

09:05:10 5 I HAVE CONSIDERED THE 3553(A) FACTORS IN ORDER TO ENSURE A
09:05:16 6 SENTENCE SUFFICIENT BUT NOT GREATER THAN NECESSARY TO COMPLY
09:05:19 7 WITH THE PURPOSES OF SENTENCING.

09:05:21 8 I HAVE CONSIDERED THE NATURE AND CIRCUMSTANCES OF THE
09:05:24 9 CRIME, INCLUDING THAT IT WAS A SERIOUS OFFENSE, IT DID INVOLVE
09:05:28 10 AN ABUSE OF A POSITION OF TRUST. AND ALTHOUGH IT WAS A
09:05:32 11 MISDEMEANOR, IT DID INVOLVE OBTAINING A SUPERVISOR'S PASSWORD
09:05:40 12 AND ACCESSING ACCOUNT INFORMATION AFTER TERMINATION FROM TESLA
09:05:42 13 AND DISTRIBUTION OF TRADE SECRET, HIGHLY CONFIDENTIAL
09:05:47 14 INFORMATION ABOUT TESLA, KNOWN TO HAVE BEEN OF GREAT VALUE TO
09:05:50 15 TESLA.

09:05:51 16 MR. BARTON: YOUR HONOR, I DON'T WANT TO INTERRUPT,
09:05:53 17 BUT I DON'T THINK THERE IS ANY ALLEGATION OF TRADE SECRETS
09:05:56 18 BEING INVOLVED.

09:05:57 19 THE COURT: NO, JUST CONFIDENTIAL.

09:05:58 20 MR. BARTON: IT'S CONFIDENTIAL NON-TRADE SECRET
09:06:00 21 INFORMATION.

09:06:01 22 MS. KNIGHT: THAT'S, THAT'S CORRECT.

09:06:03 23 THE COURT: LET ME MODIFY THAT.

09:06:05 24 OF CONFIDENTIAL INFORMATION. AND EXPOSING OR PROVIDING TO
09:06:10 25 OTHER EMPLOYEES, INFORMATION THAT TESLA MAINTAINED IN A

09:06:13 1 CONFIDENTIAL WAY.

09:06:22 2 THIS CONDUCT CAUSED TESLA TO EXPEND TIME AND MONEY TO
09:06:25 3 INVESTIGATE THE THEFT AND DAMAGED MR. KALBASI'S FORMER
09:06:33 4 EMPLOYER. AND ALTHOUGH I FIND THIS TO BE SERIOUS, IT'S A
09:06:37 5 SERIOUS MISDEMEANOR, IT'S NOT A SERIOUS FELONY, AND I'M NOT
09:06:42 6 CROSSING THE LINE, AND I HAVE TO RECOGNIZE THAT THIS IS THE
09:06:45 7 CRIME OF CONVICTION, IT IS A MISDEMEANOR.

09:06:55 8 I'VE ALSO CONSIDERED MR. KALBASI'S PERSONAL
09:06:57 9 CHARACTERISTICS, HE'S A YOUNG MAN, HE'S HIGHLY EDUCATED, HE HAS
09:07:01 10 AN EXCELLENT WORK HISTORY, A HISTORY OF GREAT SUCCESS IN HIS
09:07:04 11 PROFESSION, WHICH HAS BEEN THROWN OFF COURSE, MAYBE FATALLY, BY
09:07:10 12 HIS OWN MISTAKES. I NOTE HIS ACKNOWLEDGEMENT OF RESPONSIBILITY
09:07:15 13 FOR HIS OWN ACTIONS.

09:07:21 14 I ALSO NOTE MR. KALBASI'S PERSONAL STRUGGLES, HAVING
09:07:27 15 IMMIGRATED FROM IRAN WITH HIS FAMILY. HIS FAMILY WAS PUNISHED
09:07:30 16 FOR POLITICAL ACTIVITIES, HIS FAMILY AND MR. KALBASI HAVE
09:07:34 17 OVERCOME THOSE TERRIBLE CIRCUMSTANCES AND MR. KALBASI HAS
09:07:38 18 SEIZED THE OPPORTUNITY TO BECOME HIGHLY EDUCATED AND
09:07:43 19 PRODUCTIVE.

09:07:43 20 HE IS MARRIED, HAS MANY FRIENDS AND RELATIVES AND
09:07:47 21 ASSOCIATES WHO SPEAK LIE HE OF HIS CHARACTER. HE'S TAKING CARE
09:07:51 22 OF HIS PARENTS WHEN HE COULD. HE'S SETTLED THE CIVIL LAWSUIT
09:07:56 23 FILED BY TESLA IN THIS MATTER. ALTHOUGH TESLA SHOULDN'T HAVE
09:08:00 24 HAD TO FILE THAT IN THE FIRST PLACE, I CERTAINLY RECOGNIZE
09:08:03 25 THAT.

09:08:04 1 AND I THINK MOST IMPORTANTLY, I'M TAKING INTO ACCOUNT THE
09:08:10 2 SERIOUS CONSEQUENCES THAT MR. KALBASI HAS ALREADY SUFFERED
09:08:14 3 BASED ON HIS WRONGDOING, LOSING ONE'S JOB IS ONE THING, THAT
09:08:19 4 HAS NOTHING TO DO HERE, REALLY THESE THINGS CAME AFTERWARD.
09:08:23 5 AND AS A 30-YEAR OLD, IT MIGHT BE HARD TO SEE THAT LOSING A JOB
09:08:26 6 IS NOT THE END OF THE WORLD, COMMITTING A CRIME COMES PRETTY
09:08:30 7 CLOSE, PROFESSIONALLY, TO THE END OF THE WORLD FOR THAT
09:08:32 8 PROFESSION.

09:08:35 9 AND YOU HAVE, BY YOUR ACTS, POISONED YOUR FUTURE CAREER IN
09:08:39 10 WAYS THAT WILL BE WITH YOU FOR A LONG TIME. YOU'VE LOST YOUR
09:08:47 11 JOB, YOU'VE LOST YOUR HOME, YOU'VE LOST FUTURE EMPLOYMENT
09:08:50 12 POSSIBILITIES.

09:08:52 13 YOU HAVE ACCEPTED RESPONSIBILITY FOR YOUR OWN ACTIONS,
09:08:57 14 YOU'VE CONTINUED TO SHOW RESPONSIBILITY FOR CARING FOR YOUR
09:09:01 15 WIFE AND FOR YOUR PARENTS. YOU'VE CONTINUED TO ENROLL IN THE
09:09:08 16 COMMUNITY AS A PERSON WHO GENEROUSLY HELPS YOUR NEIGHBORS.

09:09:15 17 IT IS MY OBLIGATION TO CONSIDER A SENTENCE THAT IS
09:09:17 18 SUFFICIENT BUT NOT GREATER THAN NECESSARY TO COMPLY WITH THE
09:09:19 19 PURPOSES OF SECTION 3553.

09:09:23 20 IN MY VIEW, THE GUIDELINE RANGE IS TOO HARSH IN THIS CASE.
09:09:29 21 I DO NOT THINK THAT ANY PURPOSE IS SERVED BY A SENTENCE IN
09:09:33 22 PRISON AND I AM NOT GOING TO IMPOSE A PRISON SENTENCE. IT IS
09:09:40 23 NOT RECOMMENDED BY THE GOVERNMENT, IT IS NOT RECOMMENDED BY
09:09:43 24 PROBATION. AND I HAVE ALSO CONSIDERED, SO I WILL VARY FROM THE
09:09:47 25 GUIDELINE RANGE.

09:09:49 1 IN CONSIDERING THE GOVERNMENT'S REQUEST FOR SIX MONTHS OF
09:09:52 2 HOME DETENTION, WITHIN A PROBATIONARY SENTENCE, I HAVE
09:09:58 3 CONSIDERED THAT, AND UNDER THE CIRCUMSTANCES WHERE I WILL ORDER
09:10:05 4 THE PROPER AMOUNT OF RESTITUTION AT SOME LATER DATE, I THINK IT
09:10:11 5 IS IMPORTANT THAT MR. KALBASI HAVE THE OPPORTUNITY TO WORK WHEN
09:10:14 6 HE CAN.

09:10:15 7 AND I WANT TO MAKE SURE THAT THIS SENTENCE DOESN'T
09:10:21 8 UNNECESSARILY RESTRICT HIS ABILITY TO GAIN EMPLOYMENT. I DON'T
09:10:25 9 ACTUALLY SEE THAT ANY DETERRENT EFFECT WOULD BE RECOGNIZED BY
09:10:31 10 HOME DETENTION IN THIS CASE. AND SO UNDER THESE CIRCUMSTANCES,
09:10:36 11 I WILL ADOPT THE RECOMMENDATION OF THE PROBATION DEPARTMENT AND
09:10:40 12 IMPOSE FIVE YEARS OF PROBATION.

09:10:44 13 AND I WILL SAY, IT'S A CLOSE CALL ON THE HOME DETENTION.
09:10:47 14 I RECOGNIZE THAT TESLA PROPERLY CALLS OUT FOR PUNISHMENT TO
09:10:53 15 DETER OTHERS AND TO GET SOME VINDICATION BEYOND RESTITUTION IN
09:10:59 16 THIS MATTER, AND I HAVE CONSIDERED THAT CAREFULLY, BUT IT IS MY
09:11:04 17 DETERMINATION THAT HOME DETENTION IS NOT NECESSARY TO SATISFY
09:11:07 18 THE GOALS OF THE SENTENCING IN THIS CASE.

09:11:15 19 I WILL MODIFY THE TERMS OF PROBATION, MR. BARTON. I AM
09:11:23 20 GOING TO IMPOSE CONDITION NUMBER 2, BUT I WILL ADD TO IT THAT
09:11:28 21 PROBATION IS DIRECTED TO CONSIDER APPROVING COMPUTER USE AND
09:11:37 22 POSSESSION FOR WORK WITH REASONABLE RESTRICTIONS.

09:11:43 23 I WILL NOT IMPOSE NUMBER 3 BECAUSE I AM NOT GOING TO
09:11:47 24 REQUIRE MR. KALBASI TO LIVE IN THE UNITED STATES. AND I
09:11:52 25 WILL -- AND PROBATION WILL DEVELOP THE PROPER MEANS TO PROPERLY

09:11:58 1 SUPERVISE THE PROBATION, AND KNOWING THAT YOU WILL BE LIVING IN
09:12:03 2 TORONTO.

09:12:05 3 AND SO WITH THAT, AND KNOWING THAT RESTITUTION WILL BE
09:12:09 4 ORDERED BUT WE ARE PUTTING OFF THE AMOUNT FOR FURTHER REVIEW,
09:12:17 5 AND NO FINE WILL BE IMPOSED IN THIS CASE BASED ON INABILITY TO
09:12:23 6 PAY.

09:12:28 7 ALL RIGHT. WITH THAT THEN, PURSUANT TO THE SENTENCING
09:12:36 8 REFORM ACT OF 1984, IT IS THE JUDGMENT OF THE COURT THAT NIMA
09:12:41 9 KALBASI IS HEREBY PLACED ON PROBATION FOR A PERIOD OF FIVE
09:12:44 10 YEARS.

09:12:46 11 THE COURT RECOGNIZES THAT MR. KALBASI IS LIKELY TO BE
09:12:50 12 RESIDING IN CANADA AND WILL NOT BE IN THE UNITED STATES FOR
09:12:56 13 DIRECT SUPERVISION. THE PROBATION DEPARTMENT IS ORDERED TO
09:13:01 14 DEVELOP AN APPROPRIATE SUPERVISION METHODOLOGY CONSISTENT WITH
09:13:04 15 MR. KALBASI'S RESIDENCE.

09:13:06 16 IF WITHIN FIVE YEARS, THE DEFENDANT RETURNS TO THIS
09:13:11 17 COUNTRY LEGALLY, THE DEFENDANT SHALL BE SUBJECT TO THE
09:13:13 18 CONDITIONS OF PROBATION AS WOULD NORMALLY BE APPLIED FOR
09:13:17 19 SOMEONE LIVING HERE, BUT HE WILL BE SUBJECT TO PROBATION WHILE
09:13:20 20 HE IS IN CANADA. AND UPON RETURNING TO THE UNITED STATES,
09:13:24 21 SHALL REPORT TO THE NEAREST PROBATION OFFICE WITHIN 72 HOURS OF
09:13:29 22 REENTRY.

09:13:35 23 WHILE ON PROBATION, THE DEFENDANT SHALL NOT COMMIT ANOTHER
09:13:38 24 FEDERAL, STATE OR LOCAL CRIME, AND SHALL COMPLY WITH THE
09:13:41 25 STANDARD CONDITIONS THAT HAVE BEEN ADOPTED BY THE COURT, EXCEPT

09:13:45 1 THAT THE MANDATORY DRUG TESTING PROVISION IS SUSPENDED, AND THE
09:13:50 2 DEFENDANT SHALL COMPLY WITH THE FOLLOWING CONDITIONS:

09:13:52 3 THE DEFENDANT SHALL PAY ANY RESTITUTION AND SPECIAL
09:13:56 4 ASSESSMENT THAT IS IMPOSED BY THIS JUDGMENT AND THAT REMAINS
09:13:59 5 UNPAID AT THE COMMENCEMENT OF THE TERM OF PROBATION.

09:14:02 6 THE DEFENDANT SHALL NOT POSSESS OR USE A COMPUTER WITHOUT
09:14:05 7 THE PRIOR APPROVAL OF THE PROBATION OFFICER.

09:14:09 8 "COMPUTER" INCLUDES ANY ELECTRONIC DEVICE CAPABLE OF
09:14:13 9 ACCESSING THE INTERNET OR PROCESSING OR STORING DATA AS
09:14:17 10 DESCRIBED IN 18 U.S. CODE SECTION 1030(C), SUBSECTION 1,
09:14:24 11 INCLUDING CELL PHONES AND ALL PERIPHERAL DEVICES.

09:14:28 12 IT IS THE COURT'S ORDER TO THE PROBATION DEPARTMENT TO
09:14:32 13 ALLOW COMPUTER USE AND POSSESSION FOR EMPLOYMENT PURPOSES WITH
09:14:37 14 REASONABLE RESTRICTIONS AS DETERMINED BY THE PROBATION
09:14:40 15 DEPARTMENT.

09:14:41 16 THE DEFENDANT SHALL CONSENT TO THE PROBATION OFFICER
09:14:43 17 CONDUCTING PERIODIC UNANNOUNCED EXAMINATION OF HIS COMPUTER
09:14:47 18 EQUIPMENT, WHICH MAY INCLUDE RETRIEVAL AND COPYING OF ALL DATA
09:14:51 19 FROM COMPUTERS AND ANY PERIPHERAL DEVICES, TO ENSURE COMPLIANCE
09:14:56 20 WITH THAT CONDITION AND/OR REMOVAL OF ANY SUCH EQUIPMENT FOR
09:15:00 21 THE PURPOSE OF CONDUCTING A MORE THOROUGH INSPECTION.

09:15:03 22 THE DEFENDANT SHALL ALSO CONTENT TO THE INSTALLATION OF
09:15:06 23 ANY HARDWARE OR SOFTWARE AS DIRECTED BY THE PROBATION OFFICER
09:15:11 24 TO MONITOR DEFENDANT'S INTERNET USE.

09:15:13 25 THE COURT RECOGNIZES THAT THIS PARTICULAR PROVISION MAY

09:15:19 1 ONLY BE ENFORCEABLE DURING PERIODS OF TIME THAT MR. KALBASI IS
09:15:22 2 IN THE UNITED STATES, BUT SHOULD PROBATION HAVE THE TECHNICAL
09:15:26 3 ABILITY TO IMPOSE THIS PROVISION WHILE MR. KALBASI IS IN
09:15:30 4 TORONTO, THEN THAT WILL BE REQUIRED. IT'S NOT CLEAR THAT THEY
09:15:37 5 WILL HAVE THAT AUTHORITY, BUT TECHNOLOGY MAY PROVIDE THAT.

09:15:41 6 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY TO THE
09:15:44 7 UNITED STATES A SPECIAL ASSESSMENT OF \$25.00.

09:15:45 8 PAYMENT SHALL BE MADE TO THE CLERK OF THE UNITED STATES
09:15:48 9 DISTRICT COURT: 450 GOLDEN GATE AVENUE, BOX 36060, SAN
09:15:50 10 FRANCISCO, CA 94102.

09:16:02 11 MR. BARTON: CAN THAT BE PAID HERE, YOUR HONOR?

09:16:05 12 THE COURT: YES, IT CAN.

09:16:06 13 THE COURT FINDS THAT THE DEFENDANT DOES NOT HAVE THE
09:16:09 14 ABILITY TO PAY A FINE AND ORDERS IT WAIVED.

09:16:13 15 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY
09:16:17 16 RESTITUTION TO TESLA, BUT THAT AMOUNT SHALL BE DETERMINED BY
09:16:20 17 THE COURT AT A LATER HEARING AND IS NOT DETERMINED AT THIS
09:16:24 18 TIME.

09:16:24 19 ONCE THE DEFENDANT IS ON PROBATION AND THIS COURT HAS MADE
09:16:27 20 A RESTITUTION ORDER, RESTITUTION MUST BE PAID IN MONTHLY
09:16:31 21 PAYMENTS OF NOT LESS THAN \$100, OR AT LEAST TEN PERCENT OF
09:16:35 22 EARNINGS, WHICHEVER IS GREATER, TO COMMENCE NO LATER THAN
09:16:38 23 60 DAYS FROM THE INSTITUTION -- FROM THE DETERMINATION OF AN
09:16:45 24 AMOUNT OF RESTITUTION OR PLACEMENT ON PROBATION, WHICHEVER IS
09:16:50 25 LATER.

09:16:51 1 ANY ESTABLISHED PAYMENT PLAN DOES NOT PRECLUDE ENFORCEMENT
09:16:54 2 EFFORTS BY THE UNITED STATES ATTORNEY'S OFFICE, IF THE
09:16:57 3 DEFENDANT HAS THE ABILITY TO PAY MORE THAN THE MINIMUM DUE.

09:17:00 4 THE RESTITUTION PAYMENT SHALL BE MADE TO THE CLERK OF THE
09:17:03 5 UNITED STATES DISTRICT COURT: ATTENTION FINANCIAL UNIT. 450
09:17:10 6 GOLDEN GATE AVENUE, BOX 36060, SAN FRANCISCO, CA 94102.

09:17:16 7 MR. KALBASI, YOU MAY APPEAL YOUR CONVICTION CONSISTENT
09:17:19 8 WITH THE WAIVERS IN YOUR PLEA, AND IF YOU FEEL THAT YOUR PLEA
09:17:22 9 WAS SOMEHOW UNLAWFUL OR INVOLUNTARY OR THERE WAS SOME OTHER
09:17:26 10 FUNDAMENTAL DEFECT IN THE PROCEEDING THAT WAS NOT WAIVED BY
09:17:29 11 YOUR GUILTY PLEA.

09:17:30 12 ANY NOTICE OF APPEAL MUST BE FILED WITHIN 14 DAYS OF ENTRY
09:17:34 13 OF JUDGMENT OR WITHIN 14 DAYS OF FILING OF A NOTICE OF APPEAL
09:17:38 14 BY THE GOVERNMENT.

09:17:39 15 IF YOU CANNOT AFFORD TO PAY THE COST OF AN APPEAL, OR FOR
09:17:42 16 AN ATTORNEY TO REPRESENT YOU ON APPEAL, YOU HAVE THE RIGHT TO
09:17:45 17 APPLY FOR LEAVE TO APPEAL IN FORMA PAUPERIS WHICH MEANS THAT
09:17:50 18 YOU CAN ASK THE COURT TO WAIVE THE FILING FEE. ON APPEAL, YOU
09:17:53 19 MAY APPLY FOR COURT APPOINTED COUNSEL.

09:17:56 20 I THINK THAT THE NEXT THING WE NEED TO DO IS SET A RETURN
09:17:59 21 DATE FOR A RESTITUTION HEARING.

09:18:04 22 MS. KNIGHT: YOUR HONOR, JUST AS A HOUSEKEEPING
09:18:06 23 MATTER.

09:18:07 24 THE GOVERNMENT MOVES TO DISMISS COUNTS 1 AND 2 OF THE
09:18:10 25 INDICTMENT.

09:18:10 1 THE COURT: THANK YOU. THAT WILL BE GRANTED.

09:18:12 2 MR. BARTON: I'M WONDERING IF THERE'S ANY
09:18:15 3 CLARIFICATION THE COURT CAN IMPOSE REGARDING THE NO CELL
09:18:18 4 PHONES.

09:18:19 5 DOES THIS PREVENT HIM FROM HAVING A NON-INTERNET ENABLED
09:18:22 6 CELL PHONE? IS HE PROHIBITED FROM EVEN A FLIP PHONE DURING THE
09:18:26 7 TERM OF PROBATION?

09:18:28 8 THE COURT: WHAT IS PROBATION'S DETERMINATION ON
09:18:30 9 THAT?

09:18:30 10 PROBATION OFFICER: I'M SORRY, WHERE IS THAT
09:18:32 11 CONDITION?

09:18:32 12 MR. BARTON: NUMBER 2 SAYS THAT HE CANNOT OWN ANY
09:18:36 13 ELECTRONIC DEVICE CAPABLE OF ACCESSING OR PROCESSING OR STORING
09:18:42 14 DATA, INCLUDING CELL PHONES.

09:18:44 15 AND I KNOW MR. KALBASI HAS AN IPHONE IN HIS POCKET RIGHT
09:18:48 16 NOW AND THAT THAT IS A VIOLATION OF HIS PROBATION. AND I WANT
09:18:55 17 TO TRY TO CLARIFY THIS BEFORE IT BECOMES AN ISSUE.

09:19:00 18 PROBATION OFFICER: YOUR HONOR, PROBATION IS OKAY
09:19:01 19 WITH MR. KALBASI HAVING A CELL PHONE.

09:19:03 20 THE COURT: AND IPHONE WOULD BE ALLOWED THAT CAN
09:19:07 21 ACCESS THE INTERNET.

09:19:08 22 PROBATION OFFICER: YES, YOUR HONOR.

09:19:09 23 MR. BARTON: THANK YOU, YOUR HONOR.

09:19:10 24 THE COURT: OKAY. GOOD.

09:19:11 25 MS. KNIGHT, A RETURN DATE? ARE WE LOOKING AT THE END OF

09:19:26 1
09:19:27 2
09:19:29 3
09:19:29 4
09:19:30 5
09:19:35 6
09:19:36 7
09:19:41 8
09:19:42 9
09:19:45 10
09:19:46 11
09:19:48 12
09:19:49 13
09:19:52 14
09:19:54 15
09:19:56 16
09:19:59 17
09:20:00 18
09:20:03 19
09:20:06 20
09:20:09 21
09:20:12 22
09:20:13 23
09:20:15 24
09:20:17 25

AUGUST?

MS. KNIGHT: I WAS LOOKING AT POSSIBILITY
AUGUST 22ND.

MR. BARTON: I AM UNAVAILABLE THAT WEEK.
I RETURN THE FOLLOWING WEEK ON THE -- IS THE FIRST WEEK OF
SEPTEMBER AVAILABLE?

THE COURT: SURE. THE DAY AFTER LABOR DAY?

MR. BARTON: THAT'S FINE.

MS. KNIGHT: THAT'S FINE FOR THE GOVERNMENT,
YOUR HONOR. SO THAT'S SEPTEMBER 5TH.

THE COURT: AND THAT'S OKAY FOR US?

THE CLERK: YES, YOUR HONOR.

THE COURT: OKAY. IS THAT GOING TO BE A HEARING, IS
THAT SOMETHING I NEED TO SPECIALLY SET?

MS. KNIGHT: YOUR HONOR, I THINK WE CAN RESOLVE IT ON
THE PAPERS. I DON'T THINK WE ARE GOING TO NEED TO HAVE AN
EVIDENTIARY HEARING.

THE COURT: OKAY. I WILL SET THAT AT 9:00 AND THAT
WILL BE ALREADY REGARDING RESTITUTION AND IF TESLA CHOOSES TO
SEND A REPRESENTATIVE, I WILL MAKE SURE THAT THERE'S AMPLE
OPPORTUNITY TO HEAR FROM TESLA AS WELL. THAT WAS VERY HELPFUL
TODAY.

MR. BARTON: AND CAN MR. KALBASI BE PERMITTED TO
APPEAR TELEPHONICALLY.

THE COURT: ANY OBJECTION.

09:20:18 1
09:20:19 2
09:20:21 3
09:20:24 4
09:20:30 5
09:20:36 6
09:20:41 7
09:20:43 8
09:20:45 9
09:20:46 10
09:20:47 11
09:20:48 12
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MS. KNIGHT: ABSOLUTELY NOT, YOUR HONOR.

THE COURT: OKAY. TELEPHONE WILL BE FINE. GOOD.

GOOD. I THINK THAT'S FINE.

MR. KALBASI, I THINK YOU HAVE ALONG WAY TO GO TO REPAIR
THE DAMAGE THAT YOU'VE DONE TO TESLA, PERHAPS YOU CAN REPAY
THEM, TO YOUR CAREER, AND TO YOUR FAMILY, I THINK YOU HAVE A
LONG WAY TO GO.

ALL RIGHT. I THINK THAT'S EVERYTHING FOR THIS MORNING.

MS. KNIGHT: YES, YOUR HONOR. THANK YOU.

MR. BARTON: THANK YOU, YOUR HONOR.

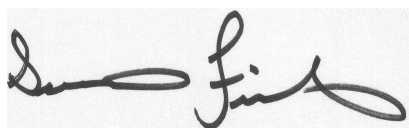
PROBATION OFFICER: THANK YOU.

(THE PROCEEDINGS WERE CONCLUDED AT 9:20 A.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 9/12/2017